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REMARKS

Entry of this Amendment is proper because it does not raise any new issues requiring further search by the Examiner, narrows the issues on appeal, and is believed to place the present application in condition for immediate allowance.

Claims 1-6 and 8-24 are all the claims presently pending in the application.

While Applicant believes that the claims are patentable as currently written, to speed prosecution, claim 8 is rewritten in independent form. Claim 7 correspondingly has been canceled without prejudice or disclaimer.

It is noted that the claim amendments are made only for more particularly pointing out the invention, and not for distinguishing the invention over the prior art, narrowing the claims or for any statutory requirements of patentability. Further, Applicant specifically states that no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Claims 1-4, 7-11, 14, 18-20, and 22-24 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Sharma (U.S. Patent No. 6,182,109). Claim 17 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Sharma in view of what allegedly was well known at the time of the invention. Claims 5, 12, and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sharma in view of Fodor, et al. (U.S. Patent No. 6,438,104; hereinafter "Fodor"). Claims 6, 13, 16, and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sharma in view of Cherkasova, et al. (U.S. Patent No. 6,360,270; hereinafter "Cherkasova").

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These rejections are respectfully traversed in the following discussion.

I. THE CLAIMED INVENTION

The exemplary aspects of the claimed invention are directed to a server and network system and received load control method.

Applicant discloses that, when a part of the received data has to be discarded at the processing unit with storage, the performance of the processing unit can be deteriorated and in some cases may stop the operation at the processing unit with storage (e.g., see specification at page 9, lines 10-12).

Thus, in order to avoid this problem of deterioration of performance of the processing unit, an exemplary feature of the claimed invention provides a shaper that limits the received data load to a designated value so that the received data load exceeding the data receiving capacity of the processing unit with storage is not applied at all to the processing unit with storage. The designated value is set corresponding to the data receiving capacity of the processing unit with storage (e.g., see specification at page 9, lines 13-18). That is, the discarding is not performed at the processing unit with storage (e.g., see specification at page 10, lines 1-3 and 12-13).

Another exemplary aspect of the claimed invention sets the designated value of the shaper to the data receiving capacity of the processing unit with storage, including a margin (e.g., see specification at page 9, lines 16-23). That is, the shaper operates to make the receiving load limit at the processing unit less than the receiving capacity of the processing unit (i.e., the margin = the receiving capacity of the processing unit - the

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designated value). As such, the processing unit according to the exemplary aspects of the claimed invention, can execute detecting of an abnormal state, displaying the abnormal state, and recovering processes by using the margin which is provided by the shaper discarding the exceeded received data.

Thus, the claimed invention is capable of preventing a deterioration of the performance of the processing unit and also preventing the occurrence of stopping of the operation of the processing unit (e.g., see specification at page 10, lines 14-21).

For example, in an illustrative, non-limiting aspect of the present invention, as defined by independent claim 1, a server includes processing means for processing data transferred from plural clients, comparing means for comparing an amount of received load corresponding to each received data transferred from plural clients with a designated value, and judging means for judging whether a part of the each received data should be discarded prior to receipt of at least a portion of the amount of received load by the processing means of the server. The server controls the received load corresponding to each received data transferred from the plural clients based on a judged result of the judging means.

Independent claims 3, 7, 10, 14, 18, 20, and 21 recite somewhat similar features.

II. THE PRIOR ART REJECTIONS

A. Claims 1-4, 7-11, 14, 18-20, and 22-24 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Sharma. For at least the following reasons, Applicant respectfully traverses this rejection.

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For the Examiner's convenience, Applicant incorporates herein by reference, in their entirety, all of the traversal arguments set forth in the Amendment under 37 C.F.R. § 1.111 filed on May 25, 2005.

Turning to the "Response to Arguments" section of the present Office Action, in response to Applicant's argument that Sharma fails to disclose or suggest "*judging means for judging whether a part of said received data should be discarded prior to receipt of at least a portion of said amount of received load by said processing means of said server*" (as recited in claim 1), the Examiner asserts that claimed invention "does not require judging only a part of the received data".

The Examiner argues that "the whole includes all parts of the whole." Thus, the Examiner alleges that "by rejecting the whole request, Sharma necessarily also discloses rejecting part of each request" (see Office Action at pages 10-11, bridging paragraph).

Applicant respectfully traverses this rejection for several reasons.

Independent claim 1

Applicant notes that the specific claim language of claim 1 must be considered in determining whether Sharma anticipates the claimed invention. That is, each and every feature of the claim must be shown by Sharma, in as complete detail as recited in the claim.

For example, independent claim 1 recites, *inter alia*, a server, including:

processing means for processing data transferred from plural clients;
comparing means for comparing an amount of received load corresponding to each received data transferred from plural clients with a designated value; and

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judging means for judging whether a part of said each received data should be discarded prior to receipt of at least a portion of said amount of received load by said processing means of said server,

wherein said server controls said received load corresponding to said each received data transferred from said plural clients based on a judged result of said judging means (emphasis added).

First, turning to the ordinary meaning, the term “*part*” generally is defined as “*a portion, division, piece, or segment of a whole*” by The American Heritage® Dictionary of the English Language: Fourth Edition. 2000.

Turning to the specification, Applicant notes that nothing in the specification indicates that the term “*part*” should be given any other meaning than its ordinary meaning. Indeed, the specification clearly explains, for example, that when the received load caused by the received data exceeds a designated value, the *exceeded part of the received data* is discarded at the shaper 11 being the input port of the server 1 (all reference numerals herein being used for the Examiner’s clarity only and not for limiting the claims). That is, the load receiving at the server 1 is limited to the designated value at the input port being the shaper 11. The total amount of the received data is compared with a shaper value set at the shaper value setting section 12, and a part of the received data being exceeded the shaper value is discarded based on the compared result (e.g., see specification at page 7, lines 25-30, and page 8, lines 1-5).

Thus, contrary to the Examiner’s position, by definition and as described in the specification, the claimed “*part*” of each received data is not reasonably equivalent to the whole received data.

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Moreover, Applicant notes that the claim does not simply recite “*rejecting a part*”, as alleged by the Examiner, and which the Examiner considers to also be rejected if the whole were rejected. That is, even assuming *arguendo* that rejecting the whole includes rejecting all parts of the whole, such is not relevant since this does not correspond to the actual language of claim 1.

Instead, turning to the actual language of the claim, claim 1 recites, *inter alia*, “judging means for judging whether a part of said each received data should be discarded” (emphasis added).

Applicant submits that judging whether the whole received data should be discarded does not necessarily include the specific feature of judging whether a “part” of the whole should be discarded, as recited in claim 1.

In comparison, Sharma clearly does not disclose or suggest judging a part of the whole, but instead, discloses only judging the whole.

Again, the claim specifically recites “judging means for judging whether a part of said each received data should be discarded” as recited in claim 1, not discarding a part of the received data, which the Examiner alleges would be included if the whole received data were discarded. Applicant submits that, whether Sharma discards all parts of the whole is not the same as, or relevant to, whether Sharma actually judges whether a *part* of the whole should be discarded (as apposed to judging whether or not the whole should be discarded).

Second, turning again to the language of the claims, claim 1 defines “*judging means*” for judging whether a part of the received data should be discarded. Applicant

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notes that "*judging means*" invokes a means-plus-function interpretation under 35 U.S.C. § 112, sixth paragraph.

Thus, the Examiner must give the claimed "*judging means*" their broadest reasonable interpretation, in light of and consistent with, the written description of the invention in the application (e.g., see M.P.E.P. § 2182). That is, the claimed "*judging means*" should be interpreted to cover the corresponding structure described in the specification and reasonable equivalents thereof.

Clearly, the claimed "*judging means for judging*" whether a part of the received data should be discarded, as exemplarily defined by the specification of the present application (e.g., see specification at page 9, lines 13-16), is not performed in substantially the same way, and indeed, does not produce substantially the same result, as the means by which Sharma determines whether the whole received data should be discarded.

Third, as is discussed in more detail below with respect to claims 5, 12, and 15, the Examiner's interpretation of the language of claim 1 is inconsistent with the claimed invention as a whole.

For example, when considering the claims as a whole for what they fairly teach to the ordinarily skilled artisan, the claimed "*part*" cannot be the whole, as alleged by the Examiner, if a "*remaining part*" is later discarded, as exemplarily defined by claims 5, 12, and 15.

That is, the claimed invention, as recited in claims 5, 12, and 15, clearly defines that when a "*part*" of the received data is discarded using an EPD, then "a remaining

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part" of each received data is discarded. Thus, the Examiner's interpretation of the "part" clearly would render claim 1 inconsistent with claims 5, 12, and 15, since Sharma discards the whole received data, and there would be no "remaining part".

For at least the foregoing reasons, Applicant respectfully submits that Sharma clearly does not disclose or suggest all of the features of the claimed invention, as recited for example, in independent claim 1 and dependent claims 2, 22, and 23.

Independent claim 3

Somewhat similarly, Applicant notes that the specific claim language of claim 3 also must be considered in determining whether Sharma anticipates the claimed invention.

For example, independent claim 3 recites, *inter alia*, a server, including:

processing means for processing data;
shaper value setting means for setting a shaper value
based on a receiving capacity of said processing means of said
server; and
shaper means for comparing an amount of received load
corresponding to each received data transferred from plural
clients to said shaper value, and judging whether a part of said
each received data transferred from said plural clients should
be discarded prior to receipt of at least a portion of said
received load by said processing means of said server (emphasis added).

That is, claim 3 defines "*shaper means*" for comparing an amount of received load corresponding to each received data transferred from plural clients to the shaper value, and judging whether a part of each received data transferred from the plural clients should be discarded prior to receipt of at least a portion of the received load.

Applicant notes that "*shaper means*" invokes a means-plus-function interpretation under 35 U.S.C. § 112, sixth paragraph. Thus, the Examiner must give the claimed

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“*shaper means*” their broadest reasonable interpretation, in light of and consistent with, the written description of the invention in the application (e.g., see M.P.E.P. § 2182). That is, the claimed “*shaper means*” should be interpreted to cover the corresponding structure described in the specification and reasonable equivalents thereof.

Clearly, the claimed “*shaper means for comparing... and judging*” whether a part of each received data transferred from the plural clients should be discarded prior to receipt of at least a portion of the received load, as exemplarily defined by the specification of the present application (e.g., see specification at page 7, lines 25-30, page 8, lines 1-5, and page 9, lines 13-16), is not performed in substantially the same way, and indeed, does not produce substantially the same result, as the means by which Sharma determines whether the whole received data should be discarded.

For at least the foregoing reasons, Applicant respectfully submits that Sharma clearly does not disclose or suggest all of the features of the claimed invention, as recited for example, in independent claim 3.

Claim 4

With respect to claim 4, claim 4 is patentable over Sharma by virtue of its dependency from claim 1, as well as for the additional features recited therein.

For example, Applicant submits that, even assuming *arguendo* that “by rejecting the whole request, Sharma necessarily also discloses rejecting part of each request”, as alleged by the Examiner, then Sharma clearly does not (and cannot) disclose or suggest all of the features of at least dependent claim 4.

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Claim 4 recites, *inter alia*, “said shaper means discards a part of said received data exceeding said received load based on a judged result prior to receipt of said at least said portion of said received load by said processing means of said server” (emphasis added).

That is, the claimed invention, as recited in claim 4, clearly defines the “*part*” of the received data as being the “*part of said received data exceeding said received load*”.

Clearly, Sharma does not disclose, suggest or even contemplate discarding a part of the received data which exceeds the received load, but instead, merely discards the whole request. In other words, Sharma merely discloses discarding the whole request or receiving the whole request (i.e., absolutes (all or nothing)). Sharma clearly does not disclose or suggest discarding less than the whole or receiving less than the whole.

Thus, Sharma clearly does not (and cannot) disclose or suggest all of the features of claim 4.

Claims 7-9

While Applicant believes that the claims are patentable over Sharma, to speed prosecution, claim 8 is rewritten in independent form and claim 7 correspondingly is canceled without prejudice or disclaimer.

Independent Claim 8 recites, *inter alia*, that “said server judges whether a part of said each received data should be discarded based on said judged result prior to transferring said at least said portion of said amount of received load to said processing unit” (emphasis added).

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That is, the *part* of the received data cannot be the *whole* data if at least a portion of the amount of received load is transferred. Clearly, if discarding the whole received data is interpreted as reading on discarding a part of the received data, then Sharma clearly cannot transfer a portion of the received load. Instead, none of the received load would be transferred.

Claim 9 is patentable over Sharma for somewhat similar reasons as claim 8, as well as for the additional features recited therein.

Claims 10 and 11

Independent claim 10 recites, *inter alia*, a network system, including:

*plural clients connecting to a network; and
a server connecting said plural clients through said
network,
wherein said server comprises:
a processing unit that processes each data
transferred from said plural clients;
shaper value setting means for setting a shaper
value based on a receiving capacity of said processing unit of
said server; and
shaper means for comparing an amount of
received load corresponding to each received data transferred
from said plural clients to said shaper value, and judging
whether a part of said each received data transferred from said
plural clients should be discarded prior to receipt of at least a
portion of said amount of received load by said processing unit
(emphasis added).*

That is, claim 10 defines “shaper means” for comparing an amount of received load corresponding to each received data transferred from plural clients to the shaper value, and judging whether a part of each received data transferred from the plural clients should be discarded prior to receipt of at least a portion of the received load.

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Applicant notes that “*shaper means*” invokes a means-plus-function interpretation under 35 U.S.C. § 112, sixth paragraph. Thus, the Examiner must give the claimed “*shaper means*” their broadest reasonable interpretation, in light of and consistent with, the written description of the invention in the application (e.g., see M.P.E.P. § 2182). That is, the claimed “*shaper means*” should be interpreted to cover the corresponding structure described in the specification and reasonable equivalents thereof.

Clearly, the claimed “*shaper means for comparing... and judging*” whether a part of each received data transferred from the plural clients should be discarded prior to receipt of at least a portion of the received load, as exemplarily defined by the specification of the present application (e.g., see specification at page 7, lines 25-30, page 8, lines 1-5, and page 9, lines 13-16), is not performed in substantially the same way, and indeed, does not produce substantially the same result, as the means by which Sharma determines whether the whole received data should be discarded.

For at least the foregoing reasons, Applicant respectfully submits that Sharma clearly does not disclose or suggest all of the features of the claimed invention, as recited for example, in independent claim 10.

Claim 11 is patentable over Sharma for somewhat similar reasons as claim 10, as well as for the additional features recited therein.

Independent claim 14

Independent claim 14 recites, *inter alia*, a received load control method at a network system in which a server connects to plural clients through a network, including:

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setting a shaper value based on a receiving capacity of a processing unit of said server;
comparing an amount of received load corresponding to each received data transferred from said plural clients to said shaper value; and
discarding, prior to receipt of at least a portion of said each received data to said processing unit, a part of said each received data exceeding said shaper value when said amount of said received load exceeds said shaper value (emphasis added).

That is, the claimed invention, as recited in claim 14, clearly defines the “part” of the received data as being the “*part of said received data exceeding said shaper value*”.

Clearly, Sharma does not disclose, suggest or even contemplate discarding a part of the received data which exceeds the shaper value, but instead, merely discards the whole request. In other words, Sharma merely discloses discarding the whole request or receiving the whole request (i.e., absolutes). Sharma clearly does not disclose or suggest discarding less than the whole request or receiving less than the whole request.

Thus, Sharma clearly does not (and cannot) disclose or suggest all of the features of claim 14.

Claims 18 and 19

Independent claim 18 recites, *inter alia*, a server, including:

means for processing data;
means for setting a shaper value based on a receiving capacity of said means for processing data; and
means for comparing an amount of received load corresponding to each data received from a plurality of clients with said shaper value prior to receipt of at least a portion of said each data by said means for processing data (emphasis added).

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On the other hand, claim 19 recites, inter alia, *“means for judging whether a part of said each data received should be discarded prior to receipt of said at least said portion of said data by said means for processing data”* (emphasis added).

That is, claims 18 and 19 define *“means for comparing”* an amount of received load corresponding to each received data transferred from plural clients to the shaper value, and *“means for judging”* whether a part of each received data transferred from the plural clients should be discarded prior to receipt of at least a portion of the received load.

Applicant notes that *“means for comparing”* and *“means for judging”* invoke a means-plus-function interpretation under 35 U.S.C. § 112, sixth paragraph. Thus, the Examiner must give the claimed *“means”* their broadest reasonable interpretation, in light of and consistent with, the written description of the invention in the application (e.g., see M.P.E.P. § 2182). That is, the claimed *“means”* should be interpreted to cover the corresponding structure described in the specification and reasonable equivalents thereof.

Clearly, the claimed *“means for comparing”* and *“means for judging”*, as exemplarily defined by the specification of the present application (e.g., see specification at page 7, lines 25-30, page 8, lines 1-5, and page 9, lines 13-16), are not performed in substantially the same way, and indeed, do not produce substantially the same result, as the means by which Sharma determines whether the whole received data should be discarded.

For at least the foregoing reasons, Applicant respectfully submits that Sharma clearly does not disclose or suggest all of the features of the claimed invention, as recited for example, in independent claim 18 and dependent claim 19.

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Independent claim 20

Somewhat similarly, independent claim 20 recites, *inter alia*, a received load control method including:

setting a shaper value corresponding to a data receiving capacity of a processing unit of a server;

determining whether an amount of each received data is less than said shaper value;

transmitting said amount of said each received data to said processing unit if said amount of said each received data is less than said shaper value; and

transmitting a part of said amount of said each received data to said processing unit if said amount of said each received data is not less than said shaper value (emphasis added).

That is, the claimed invention, as recited in claim 20, clearly defines a step of “transmitting a part of said amount of said each received data to said processing unit if said amount of said each received data is not less than said shaper value”.

Clearly, Sharma does not disclose, suggest or even contemplate transmitting a part of the amount of each received data to the processing unit if the amount of each received data is not less than the shaper value. Instead, if the amount of the received data is not less than maximum number of execution units, then Sharma merely discards the whole request. In other words, Sharma clearly does not disclose or suggest “*transmitting a part*” of the request if the number of execution units is larger than the maximum number of execution units (e.g., see Sharma at Abstract).

Thus, Sharma clearly does not (and cannot) disclose or suggest all of the features of claim 20, including the

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Independent Claim 24

Independent claim 24 recites, *inter alia*, a server, including:

*a processing unit that processes data;
a comparator that compares an amount of received load
corresponding to each received data transferred from plural
clients with a designated value; and
a judger that judges whether a part of said each received
data should be discarded prior to receipt of at least a portion of
said each received data by said processing unit,
wherein said server controls said received load
corresponding to said each received data transferred from said
plural clients based on a judged result of said judger.*

As mentioned above, the term “*part*” generally is defined as “*a portion, division, piece, or segment of a whole*” by The American Heritage® Dictionary of the English Language: Fourth Edition. 2000. Turning to the specification, Applicant notes that nothing in the specification indicates that the term “*part*” should be given any other meaning than its ordinary meaning (e.g., see specification at page 7, lines 25-30, and page 8, lines 1-5). Thus, contrary to the Examiner’s position, by definition and as described in the specification, the claimed “*part*” of each received data is not reasonably equivalent to the whole received data.

For at least the foregoing reasons, Applicant respectfully submits that Sharma clearly does not disclose or suggest all of the features of the claimed invention, as recited for example, in independent claim 24.

B. Claim 17 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Sharma in view of what was allegedly well known at the time of the invention.

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However, for the reasons set forth above, Applicant submits that Sharma does not disclose or suggest all of the features of claim 14, from which claim 17 depends.

Moreover, Applicant submits that it would not be appropriate to rely on "well known" prior art to make up for the deficiencies of Sharma, with respect to independent claim 14, since such would not serve merely to "fill in the gaps".

Therefore, Applicant respectfully submits that claim 17 is patentable over Sharma and that the rejection of claim 17 should be withdrawn.

C. Claims 5, 12, and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sharma in view of Fodor.

First, even assuming *arguendo* that "by rejecting the whole request, Sharma necessarily also discloses rejecting part of each request", as alleged by the Examiner, then Sharma clearly does not (and cannot) disclose or suggest all of the features of at least dependent claims 5, 12, and 15.

For example, claim 5 recites, *inter alia*, that "*when said shaper means judges that the amount of said received load exceeds said shaper value and discards a part of said each received data, and when a part of said each received data is discarded by utilizing an EPD (early packet discard), a remaining part of said each received data is discarded*" (emphasis added).

Somewhat similarly, claim 12 recites, *inter alia*, that "*when said shaper means judges that the amount of said received load exceeds said shaper value and discards a part of said each received data, and when a part of said each received data is discarded*"

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by utilizing an EPD (early packet discard), a remaining part of said each received data is discarded" (emphasis added).

Claim 15 recites, *inter alia*, that "when the amount of said received load exceeds said shaper value and a part of said each received data is discarded, and when a part of said each received data is discarded by utilizing an EPD (early packet discard), a remaining part of said each received data is discarded" (emphasis added).

That is, the claimed invention, as recited in claims 5, 12, and 15, clearly defines that when a "part" of the received data is discarded using an EPD, then "a remaining part" of each received data is discarded. Thus, the Examiner's interpretation of the "part" clearly would render the claims inconsistent with claims 5, 12, and 15, since Sharma discards the whole received data, and there would be no "remaining part".

Clearly, when considering the claims as a whole for what they fairly teach to the ordinarily skilled artisan, the claimed "part" reasonably cannot be the whole, as alleged by the Examiner, if a "remaining part" is later discarded.

Clearly, Sharma does not disclose, suggest or even contemplate discarding a part of the received data which exceeds the received load, but instead, merely discards the whole request. In other words, Sharma merely discloses discarding the whole request or receiving the whole request (i.e., absolutes). Sharma clearly does not disclose or suggest discarding less than the whole or receiving less than the whole.

Thus, Sharma clearly does not (and cannot) disclose or suggest all of the features of claims 5, 12, and 15.

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Second, Applicant respectfully notes that the Examiner has not responded to or answered the substance of Applicant's traversal positions, as set forth in the Amendment under 37 C.F.R. § 1.111 filed on May 25, 2005, with respect to claims 5, 12, and 15.

Applicant notes that, where the Applicant traverses any rejection, the Examiner should, if he or she repeats the rejection, take note of Applicant's argument and answer the substance of it (see M.P.E.P. § 707.07(f)).

However, Applicants respectfully submit that the Examiner has not answered the substance of Applicant's traversal positions with respect to claims 5, 12, and 15.

In the previous Amendment, Applicant argued that claims 5, 12, and 15 do not merely recite using early packet discard, as alleged by the Examiner. Instead, claim 5 recites that "when said shaper means judges that the amount of said received load exceeds said shaper value and discards a part of said each received data, and when a part of said each received data is discarded by utilizing an EPD (early packet discard), a remaining part of said each received data is discarded" (emphasis added). Claims 12 and 15 also recite somewhat similar features as claim 5.

That is, in the claimed invention, when a part of each received data is discarded using an EPD, a remaining part of each received data also is discarded. Applicant submits that the Examiner has not established, or even mentioned, how the cited references disclose or suggest this feature of the claims. Indeed, as mentioned above, Sharma clearly does not (and cannot) disclose or suggest the features of claims 5, 12, and 15.

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Thus, the Examiner respectfully is requested to reconsider and withdraw this rejection, or alternatively, issue a new Office Action (which resets the period for reply) which properly answers the substance of all of Applicant's traversal positions (in accordance with M.P.E.P. § 707.07(f)) and establishes a *prima facie* case.

D. Claims 6, 13, 16, and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sharma in view of Cherkasova. For at least the following reasons, Applicant respectfully traverses this rejection.

Even assuming *arguendo* that "by rejecting the whole request, Sharma necessarily also discloses rejecting part of each request", as alleged by the Examiner, then Sharma clearly does not (and cannot) disclose or suggest all of the features of at least claim 21, for somewhat similar reasons as those set forth above.

For example, claim 21 recites, *inter alia*, "outputting said value to a shaper, and discarding a remaining part of said amount of said each received data that exceeds said shaper value prior to transmitting said part of said amount of said each received data to said processing unit" (emphasis added).

That is, the claimed invention, as recited in claim 21, clearly defines discarding a "remaining part" of the amount of each received data "that exceeds said shaper value" prior to "transmitting said part" of the amount of each received data to the processing unit.

Thus, the Examiner's interpretation of the "*part*" clearly is not consistent with the features of claim 21.

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Indeed, Sharma clearly does not disclose or suggest discarding a "remaining part" of the amount of each received data "*that exceeds said shaper value*" prior to "*transmitting said part*" of the amount of each received data to the processing unit, as recited in claim 21.

Clearly, Sharma does not disclose, suggest or even contemplate discarding a "*remaining part*" of the received data which exceeds the received load and transmitting a "*part*", but instead, merely discards the whole request or transmits the whole request.

In other words, Sharma merely discloses discarding the whole request or receiving the whole request (i.e., absolutes). Sharma clearly does not disclose or suggest discarding less than the whole or receiving less than the whole.

Thus, Sharma clearly does not (and cannot) disclose or suggest all of the features of claims 5, 12, and 15.

Moreover, Cherkasova does not make up for the deficiencies of Sharma. Indeed, Cherkasova is not even relied upon for disclosing the claimed features for which the disclosure of Sharma clearly is deficient.

Claims 6, 13, and 16 are patentable over Sharma and Cherkasova, by virtue of their respective dependencies from claims 3, 10, and 14.

Therefore, Applicant respectfully submits that claims 6, 13, 16, and 21 would not have been obvious over Sharma and Cherkasova, either individually or in combination. The Examiner is requested to reconsider and withdraw this rejection.

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III. CONCLUSION


In view of the foregoing, Applicant submits that claims 1-6 and 8-24, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Attorney's Deposit Account No. 50-0481.

Respectfully Submitted,

Date: November 7, 2005



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CERTIFICATE OF TRANSMISSION

I certify that I transmitted via facsimile to (571) 273-8300 the enclosed Amendment under 37 C.F.R. § 1.116 to Examiner Bradley E. Edelman, Art Unit 2153, on November 7, 2005.


John J. Dresch, Esq.
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